



June 12, 2001

Mr. C. Gaffney Phillips
City Attorney
City of Livingston
P.O. Box 1093
Livingston, Texas 77351

OR2001-2467

Dear Mr. Phillips:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148307.

The Livingston Police Department (the “department”) received a request for the following information pertaining to an incident involving the requestor’s client on May 25, 2000: (1) copies of all complaints, reports, transcripts, petitions, recommendations, in any form, regarding the complaint; (2) names, addresses and professional position of those persons involved in the investigation and resolution of the complaint; and (3) a copy of the police chief’s employment application, biography, oath of office and surety. You state that you are willing to release the police chief’s oath of office, the identity of the department’s liability carrier, the criminal complaint, the judgment of dismissal, correspondence regarding non-prosecution, the names and positions of two officers who investigated the complaint, and the name and office address of the judge involved with the case. Because you do not wish to withhold the information, you must release it. Gov’t Code §§ 552.301(a), .302. However, you claim the remainder of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, you assert that portions of the submitted information are excepted from disclosure under section 552.108(a)(2). Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that

the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You assert that the requested information pertains to a case that concluded in a result other than conviction or deferred adjudication because the case was dismissed. Therefore, we agree that section 552.108(a)(2) is applicable.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. --Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); *see also* Open Records Decision No. 127 at 4 (1976). Section 552.108 does not except from disclosure information that is considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. With the exception of the basic front page offense and arrest information, you may withhold the requested information from disclosure based on section 552.108(a)(2). We note that you have the discretion to release all or part of the information that is excepted by section 552.108 and that is not otherwise confidential by law. Gov't Code § 552.007.

Second, you assert that the peace officers' personal information is excepted from disclosure under section 552.117. Section 552.117(2) excepts from public disclosure information that reveals a peace officer's home address, home telephone number, social security number, and whether the officer has family members. "Peace officer" is defined by article 2.12 of the Code of Criminal Procedure. Thus, the department must withhold the peace officers' and police chief's home addresses under section 552.117(2), as well as the police chief's home telephone number, social security number, and family member information. The department must also withhold the officers' *former* home addresses from disclosure. *See* Open Records Decision No. 622 (1994). For your convenience, we have marked those portions of the employment application and resume that must be withheld under section 552.117.

Lastly, you assert portions of Chief Clinton's employment application and biography are excepted from disclosure under sections 552.101 and 552.102. Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, *writ ref'd n.r.e.*), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common law privacy as incorporated by section 552.101 of the act.¹ *See Industrial Found. v. Texas Indus.*

¹ Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

Accident Bd., 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Accordingly, we will consider your section 552.101 and section 552.102 claims together.

For information to be protected from public disclosure by the common law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation*. In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* at 685. This office has determined that some personal financial information is highly intimate or embarrassing and thus it meets the first part of the *Industrial Foundation* test. See Open Records Decision Nos. 600 (1992) (Employee's Withholding Allowance Certificate; designation of beneficiary of employee's retirement benefits; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history), 523 (1989). We have reviewed the submitted information and marked the information that is private and must be withheld from public disclosure under section 552.102 of the Government Code.

We note that the application for employment contains information protected under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Thus, you must withhold the Texas driver's license number under section 552.130.

In summary, the department must release the complaint, judgment, and two court notifications. The department may withhold the incident report under section 552.108(a)(2); however, basic information concerning an arrested person, an arrest, or a crime are public information and must be released under section 552.108(c). The officers' and Chief Clinton's home addresses as well as Chief Clinton's home telephone number, social security number and family member information must be withheld under section 552.117. Personal financial information must be withheld under section 552.102. Last, the department must withhold the Texas driver's license number under section 552.130.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Yen-Ha Le', written in a cursive style.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/DBF/seg

Ref: ID# 148307

Enc. Marked documents

c: Mr. Jim Thompson
African-American Legal Defense
P.O. Box 91212
Houston, Texas 77291-1212
(w/o enclosures)